

# MEDIA REFORMS IN PAKISTAN

## MODEL BROADCAST LAW

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# ABOUT THIS DOCUMENT

This document comprises a model broadcast law for Pakistan incorporating next-generation reforms for the legal framework governing the broadcast sector in the country. The reforms are based on detailed recommendations from extensive consultations across Pakistan in 2016 with key media stakeholders as well as an exhaustive review of media laws in the country, by national and international media law and media development experts. The review and consultation process resulted in a detailed “National Agenda for Media Reforms” that seeks to address key legal, regulatory, professional and ethical challenges facing the media sector in Pakistan.

The 'National Agenda for Media Reforms' is endorsed by the Pakistan Coalition on Media Legal Reforms (PCMLR), an alliance of civil society organizations that support freedom of expression, right to information, protection of free speech and information practitioners as well as greater professionalization of media in Pakistan. The coalition is based at the Institute for Advocacy, Research and Development (IRADA).

Aside from incorporating key recommendations of the National Agenda for Media Reforms, the Model Broadcast Law also accommodates international best practices on media regulations. This model law aims to facilitate key stakeholders, including the Pakistan Electronic Media regulatory Authority (PEMRA), the government authorities, media industry and other stakeholders in their efforts to improve the broadcast media regulatory framework of Pakistan in their collective bid to professionalize the broadcast media in the country. The model broadcast law can help address key legal, regulatory, professional and ethical challenges facing the media sector in Pakistan.

## About the authors

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# A

## BILL

*to make provision for the regulation of the  
broadcasting sector*

**WHEREAS** it is expedient to create an independent regulatory body to undertake regulation of broadcasting, to put in place a public interest system of regulation which serves the information needs and interests of all of the people of Pakistan, to create the conditions necessary for the development of a free, diverse and professional broadcasting sector, and for matters connected therewith or ancillary thereto:

It is hereby enacted as follows:

# GENERAL PROVISIONS

## 1. Short title, extent, application and commencement. –

- (1) This Act may be called the Broadcasting Act, 201X.
- (2) It extends to the whole of Pakistan.
- (3) It shall apply to all individuals living in or for the time being in Pakistan, and to all individuals and entities providing broadcasting services from within and which are available in Pakistan.
- (4) It shall come into force at once.

## 2. Definitions. –

- (1) In this Act, unless there is anything repugnant in the subject or content:
  - (a) "advertisement" means any public announcement intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea or to bring about some other effect desired by the advertiser, for which broadcasting time has been given up to the advertiser for remuneration or similar consideration;
  - (b) "Advertising Code" means a set of standards governing broadcast content which constitutes an advertisement;
  - (c) "Authority" means the Pakistan Independent Broadcast Regulatory Authority established pursuant to section 4;
  - (d) "Annual Report" means the report required to be prepared by the Authority pursuant to section 13;
  - (e) "basic service" means the minimum package of television and/or radio channels which subscribers to a broadcast distribution service are required to purchase;
  - (f) "broadcast distribution service" means the dissemination of broadcast programming, including through terrestrial transmitters, cable, satellite or any other medium, for public consumption and for simultaneous reception, whether or not by subscription, through a radio and/or television broadcast receiver or other related electronic equipment, but does not include communications internal to a private organisation or government body, such as closed circuit television or internal address systems, or communications disseminated only over the Internet;
  - (g) "broadcast distributor" means a person or an organisation that provides a broadcast distribution service and "broadcast distribution" shall have the related meaning;
  - (h) "broadcaster" means a person or an organisation that provides a broadcasting service, whether it is a public service broadcaster, a commercial broadcaster or a community broadcaster, or a radio or television broadcaster and

- "broadcasting" shall have the related meaning;
- (i) "broadcasting frequency spectrum" means that part of the electromagnetic wave spectrum which is part of the public domain and which may from time to time be assigned to be used for broadcasting uses, but does not include other frequencies, such as those used for telecommunications purposes;
  - (j) "broadcasting service" means a defined service which consists in the preparation of a programme of audiovisual or sound material intended for simultaneous distribution to the public or sections of the public through a broadcast distribution service;
  - (k) "cable service" means a broadcast distribution service which distributes broadcasting services by means of physical cables;
  - (l) "commercial broadcaster" means a broadcasting organisation which is neither a public broadcaster nor a community broadcaster and which is operated on a for-profit basis;
  - (m) "community broadcaster" means a broadcaster which is controlled by a non-profit entity and operates on a non-profit basis, carries programming serving a particular community including by reflecting the special interests and needs of that community, and is managed and operated primarily by members of that community;
  - (n) "Council" means the Council of Complaints established pursuant to section 44 which is responsible for developing and applying the Advertising and Programme Codes;
  - (o) "free broadcasting service" means either a free-to-air broadcasting service or a broadcasting service which is included in the basic service of a broadcast distribution service;
  - (p) "free-to-air" means terrestrial broadcasting which is provided without a direct charge for reception to the recipient;
  - (q) "independent producer" means an individual or company who produces programmes for radio and/or television and who is not controlled by any individual broadcaster;
  - (r) "licence" means a licence issued by the Authority for purposes of providing a broadcasting or broadcast distribution service to the public;
  - (s) "licensee" means an individual or organisation who has been granted a licence to provide a broadcasting or broadcast distribution service to the public;
  - (t) "Minister" means the minister in charge of the ministry responsible for broadcasting;
  - (u) "Ministry" means the ministry responsible for broadcasting;
  - (v) "Pakistani content" means broadcast material produced by a licensee, by a permanent resident of Pakistan or by a company the majority of whose shareholdings are held by permanent residents, or a co-production in which the above mentioned persons have at least a 51% financial interest but does not include advertisements;
  - (w) "on-demand programmes" are individual programmes, including movies, or a series of related programmes which are offered by broadcast distribution services to customers on a short-term basis in exchange for a fee that is over and above the regular service fee;
  - (x) "Programme Code" means a set of standards relating to

- general broadcasting content and practices;
- (y) "Programme Schedule" means a plan indicating the general types of programmes proposed to be broadcast, along with the proportion of broadcasting time to be devoted to such programmes and to advertising, and the target audience, but for cable or satellite services the Programme Schedule means a description of the basic service and of all of the other services which are offered to customers;
  - (z) "public broadcaster" means a broadcaster subject to public ownership which has a mandate to broadcast in the public interest, and includes Pakistan Broadcasting Corporation (PBC), Pakistan Television (PTV) and Shalimar Recording and Broadcasting Company (SRBC);
  - (aa) "radio" means a broadcasting service that consists of sounds without images;
  - (bb) "satellite service" means the provision of a broadcast distribution service by means of satellite transmission;
  - (cc) "service provider" means a broadcaster or a broadcast distributor which has been licensed by the Authority to provide a broadcasting or broadcast distribution service;
  - (dd) "sponsorship" means the participation of a natural or legal person who is not engaged in broadcasting activities or the production of audiovisual or sound works in the direct or indirect financing of a programme with a view to promoting the name, trademark or image of that person;
  - (ee) "subscriber" means a person who receives a broadcasting or broadcast distribution service at a specific location in exchange for a prescribed fee, without further transmitting that service to any other person;
  - (ff) "television" means a broadcasting service that is audiovisual in nature; and
  - (gg) "terrestrial broadcasting" means the dissemination of a broadcasting service via the electromagnetic wave spectrum for direct reception by homes or businesses without needing equipment other than radio or television equipment.

# FREE SPEECH – CONSTITUTIONAL FRAMEWORK OF PAKISTAN

## 3. Broadcasting Policy. –

- (1) The airwaves are a public resource which shall be used to promote the public interest and the right of the public to receive and impart a diverse range of information and ideas.
- (2) Broadcast regulation shall seek to promote the following policy goals:
  - (a) to uphold the Constitution of Pakistan, as well as human rights, democracy and the rule of law;
  - (b) to protect and promote freedom of expression in accordance with international standards while respecting local values;
  - (c) to encourage creative national broadcasting as well as specialised local content;
  - (d) to support the production of quality Pakistani broadcasting that can compete effectively with foreign programming;
  - (e) to promote a diverse range of broadcasting services, including by licensing all three types of broadcaster, namely public, commercial and community;
  - (f) to promote a separation between broadcasting services and broadcast distribution services;
  - (g) to enhance the public's right to know through promoting pluralism and a wide variety of programming on matters of public interest, including less profitable genres such as culture, history, development and children's programming;
  - (h) to prevent monopolisation of ownership and to promote fair competition in the broadcasting sector, including by ensuring a level competitive playing field and by setting the total number of broadcasters based on the market carrying capacity;
  - (i) to promote accurate, informative and balanced programming, and a clear separation between advertising and other types of programming;
  - (j) to encourage the provision of quality educational programming;
  - (k) to promote the widest possible geographic distribution of broadcasting services;
  - (l) to develop and promote broadcast content which reflects national and regional culture and identity;
  - (m) to promote the appropriate use of new technology; and
  - (n) to enhance the overall financial and competitive viability of broadcasting in Pakistan.

# THE PAKISTAN INDEPENDENT BROADCAST REGULATORY AUTHORITY

## 4. Establishment of the Authority. –

- (1) The Pakistan Independent Broadcast Regulatory Authority (PIBRA or Authority) is hereby established as a body corporate having perpetual succession and a common seal which may:
  - (a) sue and be sued;
  - (b) purchase, acquire, hold or alienate real and personal property; and
  - (c) do or perform such other things as bodies corporate may by law do or perform.
- (2) The Authority is an independent institution which is accountable to the people of Pakistan through the Parliament.
- (3) Upon its establishment, the Authority shall take over all of the assets and liabilities of the Pakistan Electronic Media Regulatory Authority (PEMRA) established under the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, including all real and moveable property and staff, and it shall assume all of the powers and responsibilities allocated to PEMRA under that Ordinance and any other law, regulation or rule, except where different arrangements are provided for in this Act.
- (4) The Authority shall enjoy operational and administrative autonomy from any other person or entity, except as specifically provided for in this or any other law, and this autonomy shall be respected at all times and no person or entity shall seek to influence its Members or staff in the discharge of their duties, or to interfere with its activities, except in the discharge of a specific authority or duty provided for by law.

## 5. Appointment of Members. –

- (1) The Authority shall consist of seven (7) Members, all of whom shall have significant expertise, by virtue of their education or experience, in the areas of broadcasting, policy, law, technology, journalism and/or business and who shall be known for their high moral standards, integrity, impartiality and competence.
- (2) Whenever there are one or more vacancies on the Authority, the Cabinet Division of Federal Government shall issue an open call to interested stakeholders to nominate individuals who meet the conditions of sub-section (1) and who do not fall foul of the rules in section 6 to be considered for appointment as Members of the Authority.

- (3) The Cabinet Division of Federal Government shall notify an Independent Experts Committee of at least three members which shall review the list of those nominated under sub-section (2) and shortlist at least three times as many names as there are vacancies on the Authority, provided that if the number of nominations under sub-section (2) are less than three times as many as the number of vacancies, the Independent Experts Committee shall shortlist all of the nominees with the exception of those who clearly fail to meet the minimum requirements set out in this Act.
- (4) Only individuals who have demonstrated independence and respect for freedom of expression, and who are generally held in high social esteem, shall be appointed as members of the Independent Experts Committee.
- (5) The Independent Experts Committee shall forward the shortlist under sub-section (3) to a Special Parliamentary Committee notified by the Speaker of the National Assembly comprising the following four members:
  - (a) Two members from the Senate Standing Committee responsible for broadcasting, one each nominated by Leader of the House and Leader of the Opposition in the National Assembly; and
  - (b) Two members from the National Assembly Standing Committee responsible for broadcasting, including one each from the Treasury and Opposition benches;

Provided that when the National Assembly is dissolved, the membership of the Special Parliamentary Committee shall consist of four members from the Senate, including two each from the Treasury and Opposition benches.

- (6) The Special Parliamentary Committee shall review the names provided to it by the Independent Experts Committee and may add names of its own before publishing a shortlist of nominations, which shall contain at least twice as many names as there are vacancies on the Authority.
- (7) The Special Parliamentary Committee shall conduct public hearings regarding the shortlist published pursuant to sub-section (6) in a manner which gives members of the public an adequate opportunity to make representations concerning the individuals on the shortlist.
- (8) The Special Parliamentary Committee shall, following the public hearings, forward a list of exactly the same number of names as there are vacancies on the Authority to the President for formal appointment as Members of the Authority and the President shall make such appointments within 30 days of receiving the list from the Special Parliamentary Committee.
- (9) All Members of the Authority shall be independent and impartial in the exercise of their functions, shall represent the public interest and not the body that nominated them or any other particular interest, and

shall, at all times, seek to promote broadcasting policy as set out in section 3.

- (10) Members of the Authority must not actively engage in politics.

## **6. Disqualifications of Members. –**

- (1) No one shall be appointed as a Member of the Authority if he or she:
- (a) is not a citizen of Pakistan;
  - (b) is, or has been within the last two years, employed in the civil service or any other branch of government;
  - (c) holds, or has held within the last two years, an elected position in the federal or a provincial parliament or in any local government, or is an office bearer or an employee of a political party;
  - (d) holds, directly or indirectly, significant financial interests in telecommunications or broadcasting;
  - (e) is an undischarged bankrupt or insolvent; or
  - (f) has been convicted of a violent crime and/or a crime of moral turpitude unless five years has passed since the sentence was discharged.
- (2) Where, by virtue of a will, gift or otherwise, a Member obtains an interest noted in sub-section (1)(d), he or she shall, within a period of two (2) months, either dispose of the interest or resign from his or her position as Member.
- (3) In any case where sub-section (2) becomes applicable to a Member, he or she shall not take part in any decision-making process of the Authority until he or she has disposed of the relevant interest.

## **7. Tenure and Removal. –**

- (1) Members shall serve on the Authority for five (5) years and may be re-appointed to serve a maximum of two terms, provided that the Special Parliamentary Committee shall identify three (3) individuals from among the original group of appointees under this Act whose initial term of office shall be just two (2) years.
- (2) A Member may be removed from office only where that individual:
- (a) becomes, by virtue of sub-section 6(1), ineligible for appointment to the Authority, subject to the provisions of sub-section 6(2);
  - (b) commits a serious violation of his or her responsibilities under this Act, including by failing to promote broadcasting policy as set out in section 3, or by engaging in corrupt practices or gross negligence of duty;
  - (c) is no longer able to perform his or her duties effectively, whether due to mental disability or any other cause; or
  - (d) fails, without valid excuse, to attend three consecutive meetings of the Authority.
- (3) The Special Parliamentary Committee may remove a Member from

office but only upon receiving a positive vote by at least four (4) of the Members of the Authority in favour of removal for one of the reasons listed in sub-section (2).

- (4) No Member shall be removed from office without first being given an opportunity to be heard.
- (5) Any Member who is removed from office pursuant to this section shall be provided with written reasons for his or her removal and shall have the right to appeal his or her removal to the courts.
- (6) A Member may at any time resign his or her office by giving notice in writing to the President.

#### **8. Remuneration of Members. –**

- (1) Members of the Authority shall be compensated for actual expenses, including travel, accommodation and subsistence, incurred as a result of their duties as Members of the Authority.
- (2) Members of the Authority shall receive compensation on an equal basis for attendance at Authority meetings, based on a schedule which has been agreed in advance and approved as part of the process for agreeing the Authority's budget.

#### **9. Rules of Procedure. –**

- (1) The Members of the Authority shall appoint its Chairperson, Vice-Chairperson and Secretary from among themselves.
- (2) The Authority shall, subject to this Act, adopt such rules, in relation to meetings and other matters, as it considers necessary and appropriate to enable it to perform its functions and all business shall be conducted in accordance with such rules.
- (3) The Authority shall meet as often as it deems necessary and shall, in any case, meet at least once every month.
- (4) Meetings of the Authority shall be convened by the Chairperson, or in his or her absence the Vice-Chairperson, provided that it shall be mandatory to convene a meeting within ten days of a request for such a meeting by three (3) or more Members.
- (5) The time and place of the meeting shall be notified to Members at least seven days before the meeting, provided that, in case of an emergency, a shorter notice may be given.
- (6) The Chairperson or, in his or her absence the Vice-Chairperson, shall preside at all meetings of the Authority, provided that, if neither are present, the meeting shall appoint one of its Members to preside and provided further that the validity of the proceedings of a meeting shall not be affected by the absence of the Chairperson and the Vice-chairperson.

- (7) The quorum for meetings of the Authority shall be one-half of the total number of the appointed Members of the Authority at that time, where relevant rounded up to the nearest whole number.
- (8) A decision at a meeting of the Authority shall be adopted by a simple majority of the Members present and voting except as otherwise decided by the Authority. In case of an equality of votes, the Member presiding at the meeting shall have a casting vote in addition to his or her original vote.
- (9) The Secretary, or in his or her absence the Member so appointed by the Members present, shall cause to be recorded and kept minutes of all meetings in a form approved by the Authority.
- (10) The minutes shall be submitted to the Authority for formal approval and adoption at its next meeting, and when so approved shall be signed by the persons acting as Chairperson and Secretary at that meeting, in the presence of the other Members present at the meeting.
- (11) Sub-sections 9(8), 9(9) and 9(10) apply equally to meetings of committees of the Authority.

**10. Disclosure of Interest. –**

- (1) A Member of the Authority who has, directly or indirectly, an interest in a matter under discussion at a meeting of the Authority or a committee of the Authority shall disclose that fact and the nature of his or her interest to the other Members present at the meeting.
- (2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting.
- (3) After a disclosure under sub-section (1), the Member in question:
  - (a) shall not take part in nor be present during any discussion, deliberation or decision of the Authority; but
  - (b) may be counted for the purpose of forming a quorum of the Authority.

# FUNDING AND ACCOUNTABILITY OF THE AUTHORITY

## 11. Fiscal Year. –

- (1) The Authority's fiscal year shall be from the 1st day of July to the 30th day of June of each year.

## 12. Funding for the Authority. –

- (1) The Authority may receive funds from the following sources:
  - (a) grants from the federal budget;
  - (b) revenues from its regulatory activities, not including any fines it may levy on service providers;
  - (c) grants from local or foreign bodies;
  - (d) loans; and
  - (e) revenues raised from its own sources.
- (2) Not less than three months prior to the end of each fiscal year, the Authority shall submit to Parliament, through the Minister, a proposed budget for the following fiscal year, indicating any funds requested by the Authority from the general budget.
- (3) The Parliament may approve or modify the Authority's proposed budget, provided that it shall not reduce the funds available to the Authority by more than five (5) percent from the previous year.
- (4) Upon approval of the Authority's budget by the Parliament, the minister responsible for finance shall make appropriate arrangements regarding the allocation of that budget and shall make payments to the Authority for its operations on a quarterly basis in advance.
- (5) Notwithstanding any contrary provision in any other law, the Authority shall not be liable to pay income tax on any property held or received, or on any income earned and the Authority is hereby exempted from the payment of such tax.

## 13. Audit and Annual Report. –

- (1) Within four (4) months of the end of each fiscal year the Authority shall prepare a report of its activities during that fiscal year (the Annual Report).
- (2) The Authority shall maintain accounts of all revenues and expenditures and shall, within three (3) months of the end of each fiscal year, commission an audited statement of accounts, prepared in accordance with generally accepted accounting practices.

- (3) The Authority shall submit copies of the Annual Report and audited accounts to the Minister, who shall cause them to be laid before the Parliament as soon as practicable.
- (4) The Annual Report shall include the following information:
  - (a) a copy of the auditor's report for the previous year;
  - (b) a statement of financial performance and of cash flows;
  - (c) the budget for the current fiscal year;
  - (d) a description of the activities of the Authority during the previous year, including its licensing activities;
  - (e) information relating to complaints and research during the previous year;
  - (f) a description of any sanctions applied by the Authority during the previous year and the decisions relating thereto;
  - (g) an analysis of the extent to which the Authority has met its objectives of the previous year;
  - (h) the Authority's objectives for the current year; and
  - (i) any recommendations in the area of broadcasting.
- (5) The Authority shall publish and distribute widely the Annual Report, along with its audited accounts, including through its website.

# GENERAL FUNCTIONS, DUTIES AND POWERS OF THE AUTHORITY

## 14. Functions of the Authority. –

- (1) The Authority is charged with the oversight and regulation of broadcasting, consistent with constitutional and international guarantees of freedom of expression, and with promoting the public interest in the broadcasting sector.
- (2) The Authority shall assume the powers and functions of PEMRA as set out in the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, except insofar as these are inconsistent with its powers and functions under this Act.
- (3) In discharging its responsibilities in relation to broadcasting, the Authority shall at all times endeavour to promote broadcasting policy as set out in section 3.

## 15. Powers of the Authority. –

- (1) The Authority shall have all such powers as may be reasonably necessary for the purpose of carrying out its functions under this Act and of adopting rules governing its own procedures.
- (2) Members of the Authority shall have the rights and powers of the Civil Court in accordance with the provisions of the Civil Procedure Code, 1908.
- (3) All public authorities, including the police, are under obligation to extend their support to the Authority in exercise of its regulatory functions.

## 16. Investigations. –

- (1) The Authority shall have the power to conduct investigations and hold hearings as necessary to discharge its responsibilities under this Act.

## 17. Appointment of Secretariat. –

- (1) The Members of the Authority shall, in accordance with the budget, establish a Secretariat as part of the Authority to include such staff as they consider necessary and appropriate to enable the Authority to perform its functions.
- (2) The Secretariat shall be responsible to the Members of the Authority for the proper administration and management of the functions of the Authority, in accordance with policy laid down by the Members of Authority.

- (3) Employees of the Authority shall be independent and impartial in the exercise of their functions and shall, at all times, seek to promote broadcasting policy as set out in section 3.

**18. Limitation of Liability. –**

- (1) No proceedings, civil or criminal, shall lie against the Authority for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it did not act in good faith or with reasonable care.
- (2) No proceedings, civil or criminal, shall lie against any member, officer or employee of the Authority for anything done or said, or any failure to do or say anything in the course of the discharge of his or her duties as a member, officer or employee of the Authority, unless it is shown that the person did not act in good faith or with reasonable care.

# GENERAL PROVISIONS ON LICENSING

## 19. Licensing Plan. –

- (1) The Authority shall, after consultation with interested stakeholders, develop a Licensing Plan for the more developed media markets in Pakistan, including the national market and the larger cities.
- (2) The Licensing Plan shall cover the following issues:
  - (a) the target number of service providers that should be licensed to operate in the media market;
  - (b) the target time period for increasing or decreasing the number of service providers in the market to reach the target number;
  - (c) the general strategy to be employed to reach the target number of service providers within the target time;
  - (d) the key types of programming content that need to be promoted in the media market so as to serve the needs and interests of the public;
  - (e) the proportion of the frequency spectrum which is reserved for community broadcasters which, in the case of radio, shall normally be at least 20 percent of the frequency spectrum allocated to radio in any particular area; and
  - (f) general objectives as to the manner in which broadcasting services in that media market are to be distributed to consumers.
- (3) A primary consideration in developing the Licensing Plan for any media market shall be the commercial capacity of that market to sustain strong service providers which are able to produce and distribute quality Pakistani content and purchase appropriate foreign content so as to satisfy the public's interest in receiving diverse, quality programming.
- (4) Other considerations in developing the Licensing Plan shall include:
  - (a) the current number of service providers operating in that market, the extent of changes needed to reach the target number and the licensing situation of existing broadcasters;
  - (b) the extent to which current broadcasters are satisfying the public interest in receiving diverse, quality programming;
  - (c) the audience share of existing broadcasters;
  - (d) the need for changes in the way broadcasting services are distributed in the market, including because of changes brought about by the digital transition; and
  - (e) the extent of changes in the market which are expected to flow from the policy set out in section 20 regarding separation of broadcasting and broadcast distribution services.

## **20. Separation of Services. –**

- (1) It shall be the policy of the Authority to bring about, over time, a situation where no legal or natural person exercises, directly or indirectly, control over both a broadcasting and a broadcast distribution service.
- (2) Control shall be deemed to exist where a legal or natural person controls 20 percent or more of the voting shares in a broadcasting or a broadcast distribution service undertaking, provided that this presumption may be defeated by proof of non-control.
- (3) Where a legal or natural person exercises control over both a broadcasting and a broadcast distribution service, a two-year period shall be allocated to resolve this situation in accordance with this section, failing which the Authority shall consider taking regulatory measures to bring the person into line with this section.
- (4) This section shall not prevent broadcast distribution services from offering on-demand programmes, in accordance with any rules that the Authority may adopt governing the offer of such programmes.
- (5) This section shall not apply to public service broadcasters or to analogue, terrestrial broadcast distribution services.

## **21. Competitive Licensing. –**

- (1) All licensing processes will be conducted on a strictly competitive basis, except as otherwise provided for in this Act, and according to a process involving calls for tenders which are fair, non-discriminatory and transparent, and which seek to bring the concerned media market into line with any relevant Licensing Plan, whether that involves increasing or decreasing the number of service providers.
- (2) The Authority shall have the power to set specific rules for any competitive licensing process, provided that it shall always take the following factors into account in deciding whether or not to issue a licence to an applicant:
  - (a) the technical capacity of the applicant to deliver a quality service, taking into account the nature of the proposed service;
  - (b) the nature and extent of the financial and human resources available to the applicant and the financial viability of the proposal;
  - (c) the effect of licensing the proposed service in terms of concentration of ownership, cross ownership and fair competition;
  - (d) the proposed manner of distribution of a broadcasting service;
  - (e) promotion of the widest possible diversity of programming, taking into account the proposed Programme Schedule, the demand and the need for that service, any content needs identified in a relevant Licensing Plan, the broadcasting services already being provided in that area and any specific

- content priorities for the licensing competition which have been set by the Authority; and
- (f) the need to promote locally produced programming which serves the needs and interests of the people of Pakistan.

## **22. Non-Competitive Licensing. –**

- (1) In areas which are underserved in terms of broadcasting or broadcast distribution services, and especially community broadcasters, the Authority may receive applications for a broadcasting or broadcast distribution service licence on an ad hoc basis, in the absence of a call for applications.
- (2) The Authority shall set rules for the receipt and processing of non-competitive service licence applications.

## **23. Applications for Licences. –**

- (1) The Authority shall adopt rules in advance of any licensing tender setting out the process to be followed to enter the tender, along with a description of what information must be provided and a published schedule of the annual licence fees.
- (2) Where a licensing tender is issued, the Authority shall publish widely a notice to that effect, including the information stipulated in sub-section (1).
- (3) All applicants for a broadcasting or broadcast distribution service licence, whether as part of a competitive or non-competitive process, must provide at least the following information:
- (a) their ownership structure;
  - (b) their sources of finance and proposed financial plan;
  - (c) their organisational and management structure, including the personnel and expertise available to deliver the service;
  - (d) the proposed Programme Schedule; and
  - (e) the technical facilities for delivery of the service, including distribution arrangements for applicants for broadcasting service licences.

## **24. Assessing Licence Applications. –**

- (1) The procedure for assessing competitive licence applications shall include consideration of the application by the Authority at a public hearing where any interested stakeholder may provide written comments on the application.
- (2) The Authority shall cause any applications for a licence to be published in the *Official Gazette* at least 30 days prior to the hearing referred to in sub-section (1), provided that such publication shall not include sensitive information, for example of a commercial or private nature, provided by the applicant.
- (3) The Authority shall provide written notice of its decisions to all

applicants for broadcasting and broadcast distribution service licences and, where an application is refused, this notice shall include the reasons for the refusal, as well as information regarding the applicant's right of appeal.

- (4) Upon the grant by the Authority of a licence under this section, it shall cause notification of that decision to be published in the Official Gazette.

## **25. General Licence Conditions. –**

- (1) Licences are not transferable without the prior written approval of the Authority.
- (2) Compliance with all matters specified in the licence application, including the Programme Schedule, is deemed to be a licence condition.
- (3) Broadcasters are required to keep a master recording of all programmes and advertisements broadcast for at least two (2) months after they have been broadcast, provided that where specific broadcast material is the subject of a dispute, the relevant broadcaster shall, at the request of the Authority or Council, keep a master recording of that broadcast material until the matter has been fully resolved.
- (4) Broadcast distributors are required to keep a register of the programme channels and advertisements they distribute for at least two (2) months after they have been distributed, provided that where specific broadcast material is the subject of a dispute, the relevant broadcast distributor shall, at the request of the Authority or Council, keep a record of it until the matter has been fully resolved.
- (5) If a broadcasting or broadcast distribution service has not been initiated within six (6) months after the licence is granted, that licence shall lapse.
- (6) Licences which were issued prior to this Act coming into force shall be valid for their original legal duration, provided that the Authority may, for licences which are longer than the periods set out in sub-section (7), in exceptional cases and with reference to broadcasting policy as set out in section 3, bring a licence to an end in accordance with the periods set out in sub-section (7) even if that is prior to its stipulated legal duration.
- (7) Licences shall be valid for the following periods of time:
  - (a) three (3) years for a community broadcasting licence;
  - (b) five (5) years for a commercial radio broadcasting licence;
  - (c) seven (7) years for a commercial television broadcasting licence; and
  - (d) ten (10) years for a broadcast distribution licence.
- (8) Licensees are required to report annually to the Authority on

their activities, including the observance of licence conditions.

- (9) No significant changes may be introduced to the Programme Schedule without the approval of the Authority.

## SPECIFIC PROVISIONS ON LICENSING

### 26. Competitive Criteria. –

- (1) In accordance with sub-section 21(2), the Authority may set specific criteria for any particular licensing tender, based on the goal of promoting the widest possible diversity of programming, and taking into account any content needs identified in a relevant Licensing Plan, the broadcasting services already being provided in that area and the identification of specific content needs in the area covered by the tender.
- (2) Such criteria may identify general programme areas of interest or may set minimum percentages for specific programme areas.
- (3) The list of programme areas of interest is not closed but may include, among others:
  - (a) educational programming;
  - (b) programming aimed at children;
  - (c) historical or social programming; and/or
  - (d) programming aimed at women or at specific underserved groups (such as minority ethnic groups).

### 27. Community Broadcasters. –

- (1) The issuance of licences for the provision of community broadcasting services shall, in accordance with section 22, generally be done on a non-competitive basis.
- (2) The procedural rules for issuing licences set out in sections 23 and 24 which are applicable to non-competitive licensing processes shall apply to applicants for a community broadcasting service licence, provided that the Authority shall establish simplified procedures for such applications, along with a lower set of tariffs for both making an application and for holding a licence.
- (3) The Authority shall also set general criteria for the approval of an application to offer a community broadcasting service which shall include:
  - (a) proof that the broadcaster will be operated on a non-profit basis;
  - (b) an indication of the programming that the broadcaster proposes to provide and how it will serve the community; and
  - (c) an indication of how the community has been and will be involved in the management and programming operations of the broadcaster.

### 28. Digital Multiplexes. –

- (1) In line with the separation of services rule in section 20, no

broadcasting service provider may exercise control over a digital multiplex service.

- (2) The Authority may set criteria for deciding between competing applications for providing a digital multiplex service, but it shall always take the following criteria into account:
  - (a) the technical capacity of the applicant to deliver a quality service, taking into account the nature of the proposed service;
  - (b) the nature and extent of the financial and human resources available to the applicant and the financial viability of the proposal;
  - (c) the applicant's plans in terms of the broadcasting services it proposes to distribute; and
  - (d) the effect of issuing the licence in terms of striking a balance between promoting the carriage of the widest possible number of channels via digital transmission and providing an appropriate level of high definition services to Pakistanis.
- (3) In setting criteria for deciding between competing applications for providing a digital multiplex service, the Authority may set rules on the proportion of standard and high definition services that may be offered.
- (4) Subject to this Act, providers of a digital multiplex service must offer access to their distribution services to broadcasting service providers on a non-discriminatory and fair basis, provided that where a dispute arises between a digital multiplex service provider and a broadcasting service provider regarding access, the Authority shall have the power to resolve the dispute in the manner that is most appropriate.
- (5) Digital multiplex service providers shall provide their services on a free-to-air basis unless subscription services have been specifically approved by the Authority, with a view to giving effect to the broadcasting policy set out in section 3.

## **29. Broadcast Distribution Services. –**

- (1) Where broadcast distribution services are required by this Act or another law to distribute a specific broadcasting service, they may not charge the broadcasting service provider for such distribution and the broadcasting service provider may not charge the broadcast distribution service for distributing its service (keep the income).
- (2) In cases not covered by sub-section (1), the relationship between broadcast distribution service providers and broadcasting service providers shall be governed by market principles, provided that negotiations shall always be conducted in a fair and non-discriminatory manner and provided further that where a dispute arises between a broadcast distribution service provider and a broadcasting service provider, the Authority shall have the power to resolve the dispute in the manner that is most appropriate.

### **30. Technical Conditions. –**

- (1) The Authority may set such technical conditions for licensees as it deems fit, whether these apply generally (i.e. to all service providers), apply to a specific class of service providers or apply to a particular service provider.
- (2) Such technical conditions may, without limiting the generality of the previous sub-section, apply to the types of equipment that may be used by service providers and/or the geographic range of distribution of broadcast distribution.

### **31. Additional Terms and Conditions. –**

- (1) The Authority may, from time to time, by notification published in the *Official Gazette*, adopt rules setting out general licence terms and conditions either of general application for all licensees or for different types of licensees.
- (2) Such terms and conditions may, among other things, stipulate:
  - (a) the minimum amount of programming to be commissioned from local independent producers; and/or
  - (b) the categories of information that must be provided by licensees in their annual reports to the Authority.

### **32. Specific Licence Conditions. –**

- (1) The Authority may attach such reasonable specific conditions to a broadcasting or broadcast distribution service licence as it deems necessary to promote broadcasting policy as set out in section 3.

### **33. Licence Condition Amendments. –**

- (1) Service providers may propose amendments to their licences to the Authority, which may approve or refuse such amendments, provided that if the Authority fails to respond to a proposal within 30 working days after receiving it, the Authority shall be deemed to have accepted it.
- (2) The Authority may, in respect of any particular licence, and after giving the licence holder an opportunity to make written representations, amend of its own motion any of the prescribed conditions, including adding further conditions:
  - (a) if the Authority is of the opinion that this is necessary to promote broadcasting policy as set out in section 3; or
  - (b) in order to give effect to any international treaty governing broadcasting matters to which Pakistan is a party.

### **34. Restriction on Licence Conditions. –**

- (1) No licence conditions shall be imposed under sections 31, 32 or 33

unless they:

- (a) are relevant to broadcasting;
- (b) further broadcasting policy as set out in section 3; and
- (c) are reasonable and realistic, given the licensee.

# INTELLECTUAL PROPERTY RIGHTS

## 35. Holding Copyright. –

- (1) Service providers may only broadcast programmes or broadcasting services which they produced or for which they hold broadcasting rights and copyright must be clearly indicated as part of the credits displayed with each programme or broadcasting service.
- (2) The name of the producer of every programme shall be displayed or read out at the end of the programme.

## 36. Listed Sporting Events. –

- (1) The Authority shall have the power to issue a list of sporting events that are of national interest and importance.
- (2) Only television broadcasting services which are distributed nationally may bid for the right to carry listed sporting events, provided that this condition shall lapse four weeks before the event is due to take place if no authorisation to carry the event has been issued.
- (3) Where a television broadcasting service obtains the rights to broadcast a listed sporting event, it must carry an important part of the event, normally live, as part of its programming.
- (4) The Authority may issue rules concerning listed sporting events.

## 37. Enforcing Intellectual Property Rules. –

- (1) The Authority shall have the power to decide on claims of breach of intellectual property rights by broadcasters or broadcast distributors, provided that such breach is established under the applicable law of Pakistan.
- (2) Where the Authority finds a broadcaster to be in breach of the rules relating to intellectual property, subject to the provisions of the copyright and other related laws, it may impose one of the following measures:
  - (a) issue a public warning to the service provider;
  - (b) require the service provider to carry a message acknowledging that it has operated in breach of the rules;
  - (c) order the service provider to take such action or to desist from taking such action as it deems necessary to rectify a breach or prevent a repetition of the breach;
  - (d) impose a fine on the service provider not exceeding five (5) percent of its total revenues for the previous year; and/or
  - (e) in cases of repeated and gross breach, order the suspension of part or all of the Programme Schedule of a licensee.

# RULES RELATING TO OWNERSHIP

## 38. Transparency of Ownership. –

- (1) All service providers must provide information about their ownership structure to the Authority, providing details in accordance with the requirements of the Authority of every legal or natural person who owns five (5) percent or more of the licensed service.
- (2) Any change of ownership which represents a change of five (5) percent or more of the total value of the service provider must be reported to the Authority within one month.
- (3) The Authority shall make this information publicly available, including on its website.
- (4) Any proposed change of ownership which represents a change of ten (10) percent or more of the total value of the service provider shall be allowed only with the prior approval of the Authority.
- (5) Non-reporting of beneficial ownership or hiding the true ownership of a service provider is a criminal offence.

## 39. Foreign Ownership. –

- (1) A licence for a broadcasting or broadcast distribution service shall not be issued to an individual who is not a resident or citizen of Pakistan, or to an entity which does not have recognised legal status in Pakistan.
- (2) A licence for a broadcasting or broadcast distribution service may not be issued to an entity in which foreign ownership exceeds 25 percent of the total value of the entity or in which foreigners occupy more than 30 percent of the positions on the board of directors or management team.

## 40. Undue Concentration of Ownership. –

- (1) No legal or natural person shall exercise direct or indirect control over more than three (3) television services and more than three (3) radio services available in the same geographical area (i.e. overlapping services).
- (2) No legal or natural person shall exercise direct or indirect control over more than three a national broadcasting services and daily newspapers.
- (3) No legal or natural person shall exercise direct or indirect control over more than two broadcast distribution services operating in the same geographical area (i.e. overlapping services).

- (4) For purposes of this section, financial or voting interests of 25 percent or more of an entity shall be deemed to constitute control, provided that this presumption may be defeated by proof of non-control.
- (5) Where, for whatever reason, a situation in breach of this section arises, the legal or natural person concerned shall have three (3) months to resolve the situation, failing which the Authority shall revoke the necessary licence(s) to bring the situation into conformity with this section.

# MUST-CARRY CONTENT RULES

## 41. Pakistani Content Requirements. –

- (1) Every licensed broadcasting service shall ensure that its service includes at least seventy-five (75) percent Pakistani content.
- (2) The Authority shall adopt rules setting out what constitutes Pakistani content, based on considerations relating to the individuals involved in the preparation of the content (such as the author, producer, actors and so on) and, in public interest cases, the nature of the content (i.e. that it focuses on Pakistan).
- (3) Licensed broadcasting services should ensure that at least thirty (30) percent of the content they carry is produced in-house by them.
- (4) Licensed broadcast distribution services shall ensure that at least fifty (50) percent of the non-Pakistani content that they carry is made available in Pakistani languages, whether via dubbing or subtitling.
- (5) In exceptional circumstances, the Authority may agree to delay or waive the above requirements for a particular broadcasting service, in particular for broadcasting services distributing foreign radio channels.

## 42. Local Content Requirements. –

- (1) The Authority shall set rules relating to the minimum quota of local content that must be carried by broadcasting services or any particular broadcasting service.
- (2) The Authority shall adopt rules setting out what constitutes local content, which shall be based on the idea that the content is for and about the local area.

## 43. Other Minimum Content Requirements. –

- (1) The Authority may set additional minimum content requirements, whether for all broadcasters, for classes of licensees, such as national broadcasters, or for individual broadcasters, as part of the licensing process.
- (2) Such requirements may, among other things, include minimum requirements relating to news.
- (3) Any minimum content requirements established pursuant to subsection (1) shall be reasonable, given all of the circumstances, and shall be designed to advance broadcasting policy as set out in section 3.

## COUNCIL OF COMPLAINTS

### 44. Establishment of the Council of Complaints. –

- (1) The Authority shall establish the Council of Complaints as an independent institution which is accountable to the people of Pakistan through the Authority.
- (2) The Council shall enjoy operational and administrative autonomy from any other person or entity, except as specifically provided for in this or any other law.

### 45. Members of the Council. –

- (1) The Council shall consist of five (5) Members, all of whom shall have some expertise, by virtue of their education or experience, in the areas of broadcasting, policy, law, technology and/or journalism and who shall be known for their high moral standards, integrity, impartiality and competence.
- (2) The Authority shall appoint the Members of the Council with a view to ensuring that:
  - (a) the Council contains significant expertise on broadcast journalism;
  - (b) the Council is representative of Pakistani society, including in relation to gender;
  - (c) the Council is likely to command the respect and trust of both service providers and the general public; and
  - (d) Members of the Council do not fall foul of the disqualification rules set out in section 6.
- (3) The Members of the Council shall be independent and impartial in the exercise of their functions, shall represent the public interest and shall, at all times, seek to promote broadcasting policy as set out in section 3.
- (4) Members of the Council must not actively engage in politics.

### 46. Tenure and Removal. –

- (1) Members shall serve on the Council for four (4) years and may be re-appointed to serve a maximum of two terms.
- (2) A Member may be removed from the Council by a positive vote of at least four (4) Members of the Authority for good cause and after being given an opportunity to be heard.

### 47. Support for the Council. –

- (1) The Authority shall provide such secretarial and other support to the

Council as it needs to enable it to discharge its functions properly.

- (2) The Authority shall also provide the Council with the financial and other resources it needs to operate.

**48. Remuneration of Members. –**

- (1) Members of the Council shall be compensated for actual expenses, including travel, accommodation and subsistence, incurred as a result of their duties as Members of the Authority.
- (2) Members of the Council shall receive compensation on an equal basis for attendance at Council meetings based on a schedule which has been approved in advance by the Authority.

**49. Rules of Procedure. –**

- (1) The Council shall appoint its own Chairperson, Vice-Chairperson and Secretary from among its Members.
- (2) The Council shall, after consultation with the Authority and subject to this Act, adopt such rules, in relation to meetings, complaints and other matters, as it considers necessary and appropriate to enable it to perform its functions and all business shall be conducted in accordance with such rules.
- (3) The Council shall meet as often as it deems necessary to conduct its business.
- (4) Meetings of the Authority shall be convened and chaired by the Chairperson, or in his or her absence the Vice-Chairperson.
- (5) The quorum for meetings of the Council shall be three (3).
- (6) A decision at a meeting of the Council shall be adopted by a simple majority of the Members present and voting except as otherwise decided by the Council, provided that in case of an equality of votes, the Member presiding at the meeting shall have a casting vote in addition to his or her original vote.

**50. Function and Powers of the Council. –**

- (1) The primary function of the Council shall be to promote professional standards among broadcast service providers.
- (2) To discharge the function set out in sub-section (1), the Council shall, among other things:
  - (a) prepare Advertising and Programme Codes;
  - (b) monitor compliance with the Codes;
  - (c) receive and decide on complaints relating to breaches of the Codes;
  - (d) recommend to the Authority appropriate sanctions for breaches

- of the Codes; and
  - (e) prepare and publish an annual report outlining its work and any recommendations it may have.
- (3) The Council shall have all necessary powers to undertake its functions under this section, including to investigate alleged breaches of the Codes either of its own motion or in response to a complaint.

# THE ADVERTISING AND PROGRAMME CODES

## 51. The Advertising and Programme Codes. –

- (1) The Council shall, in consultation with service providers, journalists and other interested stakeholders, draw up, and from time to time review and amend, both an Advertising Code and a Programme Code for service providers.
- (2) The Codes shall be published and every service provider shall be provided with a copy of each Code.

## 52. The Advertising Code. –

- (1) The Advertising Code shall address a range of issues relating to broadcast advertising, including the issues raised in this section.
- (2) All advertisements shall be clearly identified as such, normally by a visual device or a jingle.
- (3) No service provider shall carry advertisements for medicines which are available only with a prescription.
- (4) The maximum amount of advertising which may be carried by a service provider shall in no case exceed fifteen (15) minutes in any given hour provided that, for this purpose, sponsorship shall not be deemed to constitute advertising.
- (5) The Advertising Code shall also set rules regarding programme sponsorship.

## 53. The Programme Code. –

- (1) The Programme Code shall address a range of issues relating to programming including, among other things, the following:
  - (a) balance and impartiality in news and current affairs programming and the duty to strive for accuracy in these programmes;
  - (b) protection of children including in relation to involvement of children in programming;
  - (c) classification of programmes, including films, according to the recommended age of viewers;
  - (d) the terms, conduct and editing of interviews;
  - (e) the use of covert recording and subterfuge;
  - (f) keeping within accepted boundaries of taste and decency, including in relation to the portrayal of sexual conduct and violence, and the use of strong or abusive language;
  - (g) the coverage of crime and other forms of anti-social behaviour;
  - (h) distinguishing between factual material and comment;
  - (i) non-discrimination and the treatment of religion, ethnic

minorities, women and men, minors and disadvantaged groups;

- (j) respect for privacy;
  - (k) the use of subliminal images or sounds;
  - (l) identification and attribution of material;
  - (m) respect for victims and those suffering from grief, bereavement and distress;
  - (n) broadcasting content provided by third parties, including from mobile phones; and
  - (o) payment in criminal cases and financial journalism.
- (2) In developing and implementing the Programme Code, the Council shall have due regard to the rightful place in a pluralist democratic society of robust and challenging debate, of the strong expression of personal views, of the need for original, innovative and stimulating programme-making and of the potential for achieving proper balance over a series of programmes, or over time, rather than in every individual programme.

#### **54. Compliance. –**

- (1) Compliance with the Advertising and Programme Codes are deemed to be mandatory licence conditions for all service providers.

# BREACH OF THE CODES

## 55. Complaints and Monitoring. –

- (1) Anyone who believes that a service provider has breached the Advertising Code or the Programme Code may lodge a complaint in writing with the Council and the Council shall investigate every such complaint, unless it considers the complaint to be frivolous or manifestly unfounded.
- (2) It shall be the duty of the Council to ensure that all service providers comply with the Codes and, to this end, the Council may monitor a service provider and undertake an investigation of its own motion (i.e. even in the absence of a complaint) where it believes there may have been a breach.

## 56. Investigations. –

- (1) Where it conducts an investigation pursuant to section 55, the Council shall provide the service provider with written notice of any allegation of a breach and with a reasonable opportunity to make representations and, in the case of a complaint, the Council shall also provide the complainant with a reasonable opportunity to make representations.
- (2) The Council shall, absent exceptional circumstances, come to a decision in relation to a complaint within two (2) months.
- (3) Where the Council decides that a service provider is in breach of the Advertising or Programme Code, it shall prepare a written notice which includes reasons for its decision, any sanction it is recommending pursuant to section 57 and notification of the service provider's right to appeal from this decision to the Authority.
- (4) The Council shall provide the service provider and, where relevant the complainant, with a copy of its decision and shall also publish the decision on its website.

## 57. Sanctions. –

- (1) Where the Council determines that a service provider is in breach of the Advertising or Programme Code, it may recommend one or more of the following sanctions to the Authority:
  - (a) to issue a public written warning to the service provider;
  - (b) to order the service provider to broadcast a statement, correction or retraction at a specified time and in a specified form;
  - (c) to order the service provider to take such action or desist from taking such action as it deems necessary to rectify the breach or prevent a repetition of the breach;

- (d) in cases of repeated breach of the Code(s), to order a service provider to pay a fine not exceeding five (5) percent of its total revenues for the previous year; and/or (e) in cases of repeated and gross breach of licence conditions, to order the suspension of part or all of the Programme Schedule of a service provider.
- (2) The Authority shall decide which of the sanctions set out in sub-section (1) to impose on the service provider, provided that it shall not impose the sanction provided for in sub-section (1)(e) except as decided by a positive vote of at least four (4) Members and where other sanctions have failed to prevent further breach.
- (3) Once the Advertising and Programme Codes have been adopted by the Council, the Pakistan Telecommunication Authority (PTA) shall no longer have any jurisdiction in relation to the content carried by broadcast distribution or broadcasting service providers.

# BROADCASTING FUND

## 58. Establishment and Use of a Broadcasting Fund. –

- (1) There shall hereby be established a Broadcasting Fund which shall be supported through the budget of the Authority.
- (2) The Fund shall aim to promote the following objectives:
  - (a) expanding the coverage of broadcast distribution services to underserved areas;
  - (b) improving the quality of Pakistani programme production;
  - (c) supporting the production of programme production in areas where this is less developed;
  - (d) supporting the development and reach of community broadcasting;
  - (e) promoting the production of genres of programmes that are more expensive to produce;
  - (f) promoting media literacy and community engagement where necessary; and
  - (g) protecting and promoting the rights and interests of media consumers.

## 59. Allocation of the Broadcasting Fund. –

- (1) The Fund shall be allocated on a competitive basis through semi-annual competitions overseen by the Authority.
- (2) The Authority shall establish clear rules in advance of each competition for allocation of the Fund pursuant to sub-section (1), with the main criteria for deciding between competing applications being the extent to which they advance the objectives set out in sub-section (3).
- (3) The criteria for deciding between competing applications for competitions pursuant to sub-section (1) shall be set by the Authority and shall include:
  - (a) the extent to which the application responds to an important need in the target area;
  - (b) the degree of innovation represented in the application;
  - (c) the extent to which the activity would be unlikely to take place without support from the Fund (i.e. because it would not be able to be funded on a commercial basis or by a public service media outlet); and
  - (d) the extent to which the target area served by the application is generally underserved by broadcasting.

## OTHER ISSUES

### 63. Allocation of Public Advertising. –

- (1) The allocation to service providers of advertising by public authorities shall be made based on an objective assessment of the ability of those providers to reach the target audience for the advertisement and value for money.
- (2) The Authority may adopt general rules governing the allocation of advertising by public authorities.
- (3) Any service provider who believes that they are not being treated fairly in the allocation of advertising by public authorities may lodge a complaint to this effect with the Authority and the Authority shall seek to mediate between the service provider and relevant public authority(ies).

### 60. Elections. –

- (1) The Authority shall have the power to set rules regarding broadcasting during elections, in accordance with any rules relating to this set out in other laws governing elections.

# SANCTIONS

## 61. Administrative Breaches. –

- (1) The following measures are deemed to constitute administrative breaches under this Act:
  - (a) operating in breach of any general or specific licence conditions other than a failure to respect the Advertising and/or Programme Codes;
  - (b) for a community broadcaster, failing to respect the requirement to operate on non-profit basis;
  - (c) for a digital multiplex operator, to breach the requirement in sub-section 28(5) to provide free-to-air services to users;
  - (d) for broadcast distribution service providers to fail to offer access to their distribution services on fair and non-discriminatory basis in breach of sub-sections 28(4) (for digital multiplexes) or 29(2) (for other broadcast distributors);
  - (e) for broadcast distribution service providers and broadcasting service providers subject to must carry rules to fail to respect the "keep the income" rule set out in sub-section 29(1); and
  - (f) for broadcasting service providers to fail to respect the content must carry rules set out in sub-sections 41(1) (for Pakistani content), 42(1) (for local content) and 43(1) (for other must-carry rules established by the Authority).
- (2) Where the Authority determines, after a fair process which involves giving the affected service provider an opportunity to be heard, that a service provider has committed an administrative breach as outlined in sub-section (1), it may impose one of the following measures:
  - (a) issue a public warning to the service provider;
  - (b) require the service provider to carry a message acknowledging that it has operated in breach of the rules;
  - (c) order the service provider to take such action or to desist from taking such action as it deems necessary to rectify a breach or to prevent a repetition of the breach;
  - (d) impose a fine on the service provider not exceeding five (5) percent of its total revenues for the previous year; and/or
  - (e) in cases of repeated and gross breach, order the suspension of part or all of the Programme Schedule of a licensee.

## 62. Appeals. –

- (1) Any person aggrieved by a decision of the Authority under sub-sections 24(3), 37(2), 57(1) or 61(2) may appeal to the courts for a review of that decision.
- (2) A court shall issue a stay on a decision of the Authority only where it finds, after having given the Authority and the party bringing the appeal an adequate opportunity to be heard, that the decision of the

Authority was taken without due regard for the rules of procedural fairness or that the Authority did not have any reasonable basis for making the decision, and that a failure to issue the stay would cause irreparable damage to the party bringing the stay.

- (3) A court shall reverse a decision of the Authority only where it finds, after having given the Authority and the party bringing the appeal an adequate opportunity to be heard, that the decision of the Authority was taken without due regard for the rules of procedural fairness or that the Authority did not have any reasonable basis for making the decision.

### **63. Payment of Fines. –**

- (1) Any fines imposed by the Authority shall be paid into general government revenues and shall not be kept by the Authority.

### **64. Criminal Breaches. –**

- (1) The following actions constitute criminal breaches under this Act:
  - (a) wilfully operating a service provider without a licence whether this is because no licence was ever issued, or a licence has been suspended or has lapsed;
  - (b) obtaining a licence by fraud or wilful misrepresentation on the application;
  - (c) wilfully operating both a broadcasting and a broadcast distribution service, in breach of section 20;
  - (d) failing to comply with an order of the Authority, including under sub-section 37(2) in relation to intellectual property, sub-section 57(1) for breach of the Advertising or Programming Code, or sub-section 61(2) for breach of an administrative rule; or
  - (e) wilfully breaching the rules relating to ownership in sections 38-40, including because of a failure to disclose ownership information, hiding beneficial ownership, or operating in breach of the rules relating to foreign ownership or undue concentration of ownership.
- (2) Anyone who commits a criminal breach as set out in sub-section (1) shall be fined between 1,000,000 and 10,000,000 rupees and/or imprisoned for up to one year.
- (3) In addition to the penalty set out in sub-section (2), criminal breach of the rules set out in sub-section (1) may lead to forfeiture of any licences as well as any property and equipment which has been used to commit the breach.

# FINAL PROVISIONS

## 65. Institutional Arrangements. –

- (1) Individuals or entities already providing broadcast distribution or broadcasting services under a licence issued by PEMRA on the date this Act comes into force shall make any necessary adjustments to comply with the provisions of this Act within six (6) months of that date.
- (2) The Authority shall be established within three (3) months of this Act coming into force.
- (3) The Council shall be established within six (6) months of this Act coming into force.

## 66. Regulations and Rules. –

- (1) The Authority, by notification published in the *Official Gazette*, may make regulations for carrying out the purposes of this Act, provided that such regulations are not inconsistent with this Act and do not trench on the independence or powers of the Authority or Council.
- (2) The Special Parliamentary Committee may make regulations relating to the manner for appointing and/or removing Members of the Authority, pursuant to sections 5 and 7.
- (3) The Authority may, by notification published in the *Official Gazette*, adopt rules relating to, among other things:
  - (a) its rules of procedure, pursuant to sub-section 9(2);
  - (b) the appointment of and terms and conditions of employment of the secretariat, pursuant to section 17;
  - (c) the adoption of Licensing Plans, pursuant to section 19;
  - (d) the rules and criteria relating to licensing, pursuant to sub-sections 21(2), 22(2), 23(1), 26(1), 27(2), 28(2) and 28(3);
  - (e) rules and standards relating to technical conditions, pursuant to section 30;
  - (f) additional licence terms and conditions, pursuant to section 31(1);
  - (g) what constitutes Pakistani and local content, pursuant to sub-sections 41(2) and 42(2).
  - (h) additional minimum content requirements, pursuant to sub-section 43(1);
  - (i) criteria and rules relating to competitions for awards from the Fund, pursuant to sub-sections 59(2) and 59(3);
  - (j) the allocation of advertising by public authorities, pursuant to sub-section 63(2); and
  - (k) the procedures for determining the existence of an administrative breach, pursuant to sub-section 61(2).

- (4) The Council may, by notification published in the *Official Gazette*, adopt rules relating to, among other things:
  - (a) its rules of procedure, pursuant to sub-section 49(2); and
  - (b) the Advertising and Programming Codes, pursuant to sub-section 51(1).

**67. Repeals. –**

- (1) Provisions in other laws, regulations and rules which are inconsistent with the provisions of this Act are hereby deemed to be repealed or amended to the extent of that inconsistency.
- (2) Without prejudice to the generality of sub-section (1) and for avoidance of doubt, the following provisions in other laws, regulations and rules are repealed:
  - (a) the rules/provisions in the PTA Act which restrict the content of broadcasters, once the Advertising and Programme Codes have been adopted;
  - (b) the Pakistan Electronic Media Regulatory Authority Ordinance, 2002.

**68. Removal of difficulties. –**

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Authority may make such order, not inconsistent with provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

“This resource has been produced by Institute for Research, Advocacy and Development (IRADA) with assistance of International Media Support ([www.mediasupport.org](http://www.mediasupport.org)) under a media development program for Pakistan supported by DANIDA. The contents of this resource reflect the views and findings of the producers/authors alone, not necessarily those of IMS or DANIDA.”

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